

UNIT 70 TERMINATION

September 2002

(FAC 2001-09)

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| Overall Duty | Terminate contracts when it is in the best interest of the Government. |
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| Overall Conditions | Given a contract and evidence of a need to take action to protect the Government's interests. |
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| Overall Standard | Determine if it is in the best interest of the Government to terminate the contract. Determine whether the contract should be terminated for convenience or cause/default. Carry out the termination in accordance with applicable FAR and/or Uniform Commercial Code (UCC) requirements. |
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Part A: Determine Whether to Terminate and Method (if any) of Termination

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| Sub-Duty | Determine whether to terminate. |
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| Additional Conditions | Given evidence of performance problems, a show cause or cure notice, and/or a request for termination from the requiring activity. |
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| Sub-Duty Standard | Terminate for convenience if funds are insufficient, the requirement is no longer needed, or the quantity needed has been reduced. Also terminate for convenience if there has been a radical change in the requirement that is beyond the contractor's expertise. Terminate for cause or default when there is no other alternative for obtaining performance under the contract, and the Government has a sustainable case based on the current contractor's problems and deficiencies. |
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Part B: Terminating for Convenience

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| Sub-Duty | Terminate for convenience. |
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| Additional Conditions | Given a decision to terminate for convenience. |
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| Sub-Duty Standard | Terminate the items identified for termination and negotiate a settlement that returns the contractor whole for its costs sustained in meeting the requirement to the point of cancellation. |
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Part C: Terminating for Cause or Default

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| Sub-Duty | Terminate for cause or default. |
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| Additional Conditions | Given a decision to terminate for cause or default. |
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| Sub-Duty Standard | Establish a case that meets the Government's legal and factual burdens of proof and demonstrates that the cause/default termination is the best way of protecting the Government's interests. Reinstate the contract if the contractor provides good reason for believing that reinstatement is the best way of meeting the requirement. Reprocure (if necessary) and demand recovery of all costs for which the contractor is liable. |
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Policies

| <i>FAR</i> | <i>Agency Suppl.</i> | <i>Subject</i> |
|-------------|--------------------------|---|
| 8.405-4 | | Delinquent performance on Federal Supply Schedule orders. |
| 8.405-5 | | Termination for default. |
| 8.405-6 | | Termination for convenience. |
| 9.405-1 | | Continuation of a current contract with a debarred or suspended firm. |
| 12.403 | | Termination of contracts for commercial items. |
| 19.812(d) | | Termination of 8(a) contracts for convenience when the 8(a) concern transfers ownership or control. |
| 32.109 | | Termination financing. |
| 49 | | Termination of contracts. |
| 52.212-4(l) | | Termination for the Government's convenience of contracts for commercial items. |
| 52.212-4(m) | | Termination for cause of contracts for commercial items. |
| 52.213-4(f) | | Termination for the Government's convenience of simplified acquisitions of other than commercial items. |
| 52.213-4(g) | | Termination for cause of simplified acquisitions of other than commercial items. |
| 52.249-1 | | Termination for convenience of the Government (fixed-price) (short form). |
| 52.249-2 | | Termination for convenience of the Government (fixed-price). |
| 52.249-4 | | Termination for convenience of the Government (services) (short form). |
| 52.249-5 | | Termination for convenience of the Government (educational and other nonprofit institutions). |
| 52.249-6 | | Termination (cost-reimbursement). |
| 52.249-8 | | Default (fixed-price supply and service). |
| 52.249-9 | | Default (fixed-price research and development). |
| 52.249-12 | | Termination (personal services). |

Other KSA's

1. Knowledge of commercial law, accounting, and quantitative analysis.
2. Ability to identify rules and principles applicable to settling contract terminations.
3. Ability to solve complex mathematical problems associated with reaching a termination settlement.
4. Ability to thoroughly evaluate and administer the various aspects of a contract termination.

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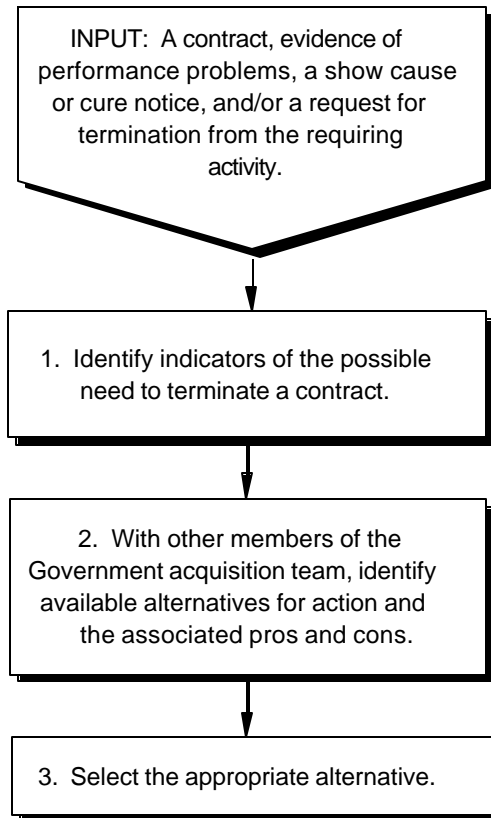
5. Ability to identify problems encountered in termination settlement and use sound judgment to generate and evaluate alternative solutions.
6. Ability to communicate orally and in writing concerning the variety of issues involved in a termination settlement.
7. Ability to maintain the honesty and integrity of the acquisition process.

Other Policies and References (Annotate As Necessary):

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Part A: Determine Whether To Terminate And Method Of Termination

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Part A: Determine Whether To Terminate And Method Of Termination

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| Tasks | Related Standards |
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| 1. Identify indicators of the possible need to terminate a contract. | <p>Examples include:</p> <ul style="list-style-type: none">• A cure or show cause notice being issued, because the contractor has failed to show the Government that it will complete the contract in accordance with its terms.• The requiring activity signaling that:<ul style="list-style-type: none">– The contract requirement no longer exists or has already been fully satisfied short of the contract quantity.– Funds are not available to complete the contract in accordance with its existing terms.– There has been a radical change in the needs of the Government that goes well beyond the scope of the current contract. |

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| Tasks | Related Standards |
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| <p>2. With other members of the Government acquisition team, identify available alternatives for action and the associated pros and cons.</p> | <p>Available alternatives and the related pros and cons will vary depending on the contracting situation. For example:</p> <ul style="list-style-type: none"> • When faced with unacceptable contract performance, alternatives may include the following: <ul style="list-style-type: none"> – Continuing the present contract using safeguards to protect the Government, such as: <ul style="list-style-type: none"> ? Permitting performance by the contractor, surety, or guarantor under a revised delivery schedule. ? Permitting the contractor to subcontract with or establish other business arrangements with an acceptable third party. – Changing delivery or other requirements to facilitate performance and obtaining compensation from the contractor in return. – Terminating part or all of the contract for cause or default. – Terminating all or part of the contract for convenience. • When faced with a significant change in requirements, alternatives may include: <ul style="list-style-type: none"> – Canceling a purchase order not yet accepted by the contractor. – Permitting the contractor to complete the current contract, because that is more cost effective than terminating for convenience. – Issuing a no-cost cancellation when: <ul style="list-style-type: none"> ? The supply or service can readily be obtained elsewhere, ? A no-cost settlement is acceptable to the contractor, ? Government property had not been furnished to the contractor, and ? There are no outstanding payments, debts, or other obligations due the Government. – Terminating all or part of the contract for convenience when contract performance is unacceptable, but the contract cannot be terminated for cause/default (e.g., because the Government is partially responsible). |

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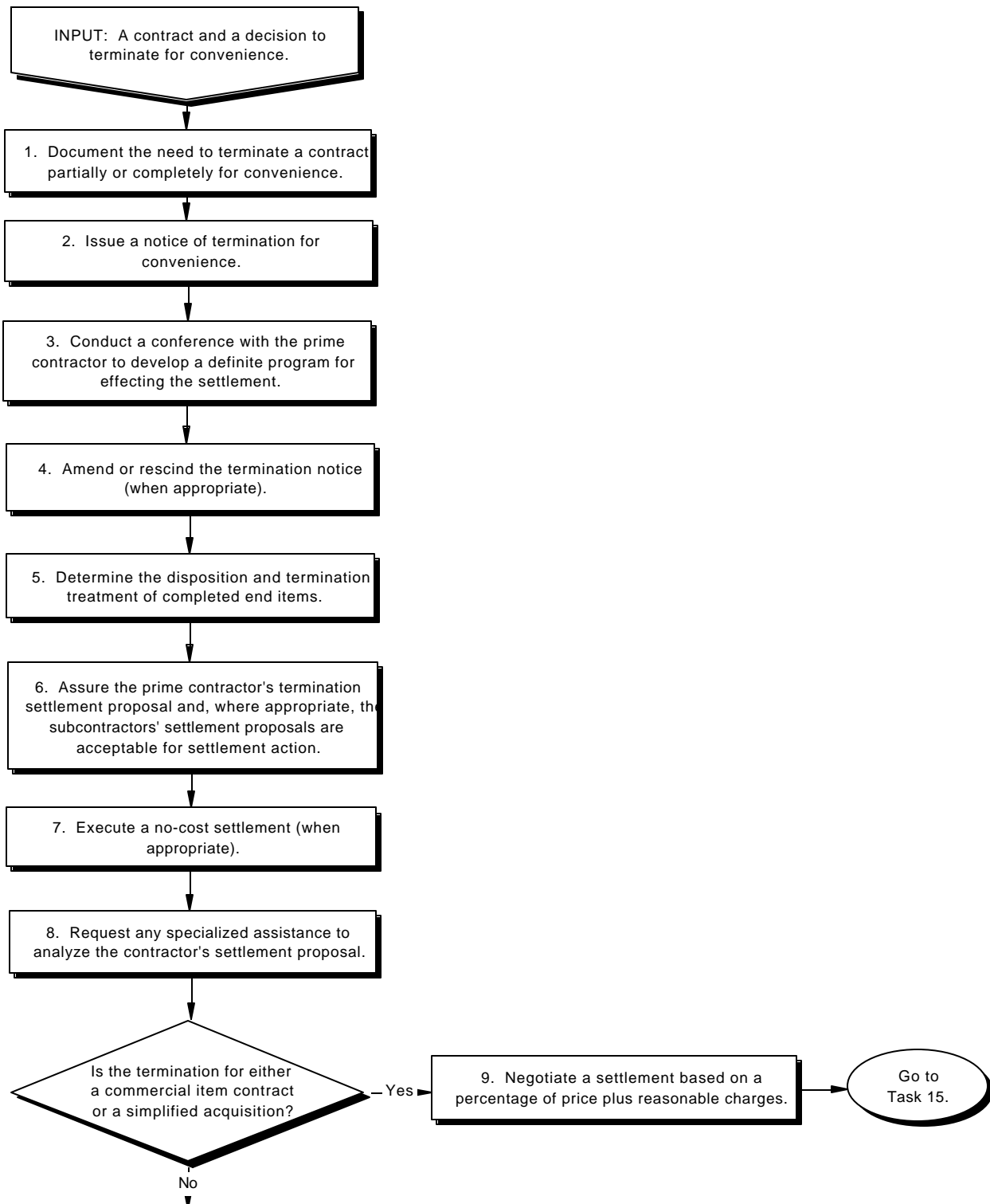
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| Tasks | Related Standards |
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| 3. Select the appropriate alternative. | Select the alternative that is in the best interest of the Government under the current contract and future contracts. Consider factors, such as the Government's needs, timeliness, and overall cost. |

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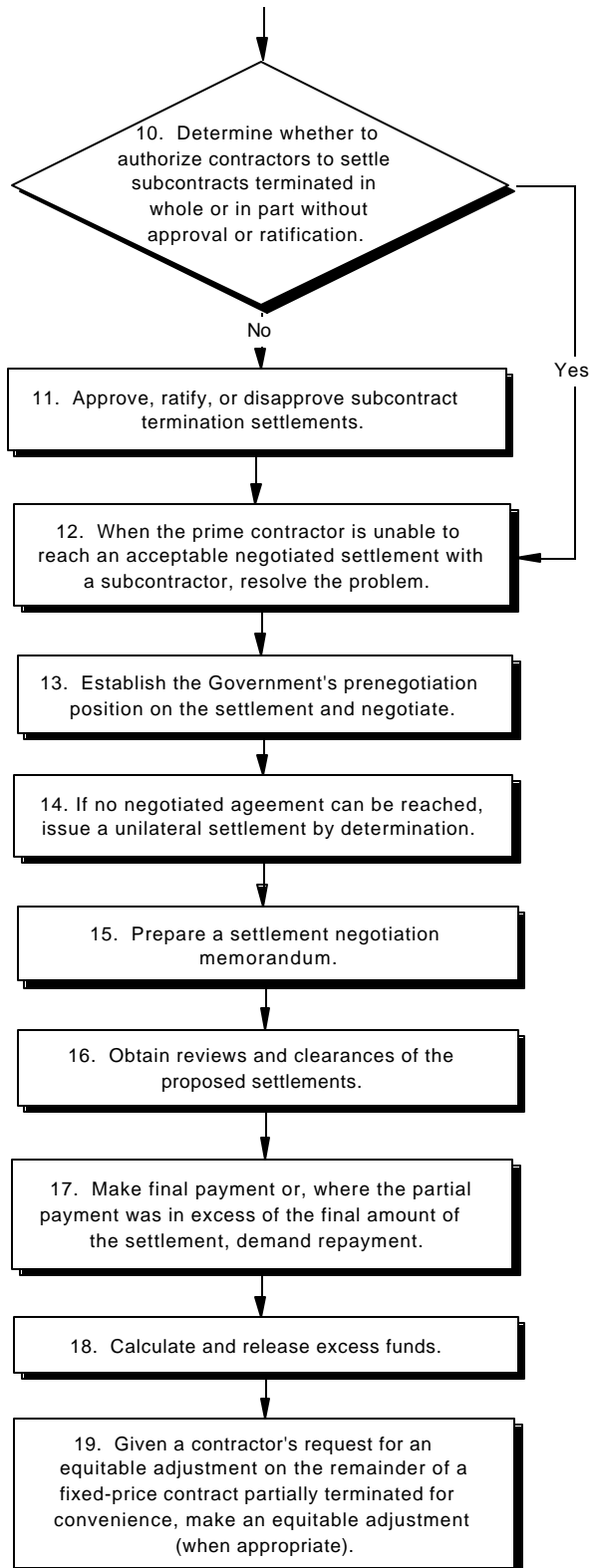
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| Tasks | Related Standards |
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| 1. Document the need to terminate a contract partially or completely for convenience. | Reasons include: <ul style="list-style-type: none">• No longer a need for the requirement;• Funding for the contract is eliminated or curtailed;• A Board of Contract Appeals (BCA) or court has overturned a cause/default termination;• Impossibility of performance (e.g., conflicting specifications); and• Others. |

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| 2. Issue a notice of termination for convenience. | <p>For noncommercial item contracts, prepare and issue the notice as prescribed in FAR 49.102 and 49.601. For commercial item contracts and noncommercial item simplified acquisitions, use the guidance provided when it is consistent with the appropriate requirements and procedures in the Contract Terms and Conditions - Commercial Items clause (FAR 52.212-4) or Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items) clause (FAR 52.213-4).</p> <p>Using one of the formats provided in FAR 49.601, the notice must state:</p> <ul style="list-style-type: none">• That the contract is being terminated for the convenience of the Government under the contract clause authorizing the termination;• The effective date of termination;• The extent of termination (e.g., specific items or complete);• Any special instructions; and• The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force. <p>Distribute the notice to:</p> <ul style="list-style-type: none">• The contractor:<ul style="list-style-type: none">– When the notice is mailed, send it by certified mail, return receipt requested.– When the notice is hand delivered, obtain a written acknowledgement from the contractor;• The contract administration office; and• Any known assignee, guarantor, or surety of the contractor. |

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| 3. Conduct a conference with the prime contractor to develop a definite program for effecting the settlement. | <p>When appropriate, principal subcontractors should be requested to attend. Topics that should be discussed and documented include:</p> <ul style="list-style-type: none">• General principles relating to the settlement of any settlement proposal, including contractor duties under the termination clause;• Contractor duties under FAR 49.104;• Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;• Status of any continuing work;• Obligation of the contractor to terminate subcontracts and general principles to be followed in settling settlement proposals;• Names of subcontractors involved and the dates termination notices were issued to them;• Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;• Arrangements for transfer of title and delivery of any material required by the Government;• General principles and procedures to be followed in the protection, preservation, and disposition of termination inventories;• Contractor accounting practices and preparation of related forms;• Form in which to submit settlement proposals;• Accounting review of settlement proposals;• Any requirement for interim financing in the nature of partial payments;• Tentative time schedule for negotiation;• Actions taken by the contractor to minimize the termination's impact upon employees; and• Obligation of the contractor to furnish accurate, complete, and current cost or pricing data, and to certify to that effect when the amount of a settlement agreement exceeds the cost or pricing data threshold. |

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| 4. Amend or rescind the termination notice (when appropriate). | <p>Amend a termination notice to:</p> <ul style="list-style-type: none">• Correct nonsubstantive mistakes in the notice;• Add supplemental data or instructions; or• Rescind the notice if it is determined that items terminated had been completed or shipped before the contractor's receipt of the notice. <p>Upon written consent of the contractor, reinstate the terminated portion of a contract, in whole or in part, by amending the notice of termination when the Contracting Officer determines in writing that:</p> <ul style="list-style-type: none">• Circumstances clearly indicate a requirement for the terminated items; and• Reinstatement is advantageous to the Government. |
| 5. Determine the disposition and termination treatment of completed end items. | <p>Promptly after the effective date of termination:</p> <ul style="list-style-type: none">• Have all undelivered completed end items inspected and accepted if they comply with the contract requirements; and• Determine which accepted end items are to be delivered under the contract. <p>For a termination under a fixed-price contract, the contractor must:</p> <ul style="list-style-type: none">• Invoice for accepted and delivered end items at the contract price in the usual manner and not include them in the settlement proposal.• Include completed end items that are accepted and not delivered under the contract in the settlement proposal at the contract price, adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale. |

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| 6. Assure the prime contractor's termination settlement proposal and, where appropriate, the subcontractors' settlement proposals are acceptable for settlement action. | <p>For a commercial item contract or simplified acquisition of a noncommercial item, the proposal:</p> <ul style="list-style-type: none">• Should reflect a termination settlement based on:<ul style="list-style-type: none">– The percentage of work performed prior to termination; plus– Any reasonable charges that the contractor demonstrates resulted from the termination.• Need not comply with the FAR contract cost principles or cost accounting standards. <p>For a fixed-price noncommercial item contract, the proposal must be presented using the inventory basis for settlement (FAR 49.206-2(a)) unless the Contracting Officer approved in advance use of the total cost basis for settlement (FAR 49.209-2(b)). Use of the total cost basis should only be approved when use of the inventory basis is not practicable or will unduly delay settlement, as in the following examples:</p> <ul style="list-style-type: none">• Production has not commenced and the accumulated costs represent planning and preproduction or "get ready" expenses.• Under the contractor's accounting system, unit costs for work in process and finished products cannot readily be established.• The contract does not specify unit prices.• The termination is complete and involves a letter contract. <p>For cost-reimbursement contracts, the settlement proposal should include any unvouchered costs and any proposed fee. The proposal must not include costs that have been:</p> <ul style="list-style-type: none">• Finally disallowed; or• Previously vouchered and formally questioned by the Government but not yet decided as to allowability. |

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| 7. Execute a no-cost settlement (when appropriate). | Execute a no-cost settlement agreement (FAR 49.603-6 or 49.603-7, as applicable) if: <ul style="list-style-type: none">• The contractor:<ul style="list-style-type: none">– Has not incurred costs for the terminated portion of the contract; or– Is willing to waive the costs incurred; and• No amounts are due the Government under the contract. |
| 8. Request any specialized assistance to analyze the contractor's settlement proposal. | To expedite the termination settlement, assistance may be requested from specially qualified personnel to: <ul style="list-style-type: none">• Assist in dealings with the contractor;• Advise on legal and contractual matters;• Conduct accounting reviews and advise and assist on accounting matters (FAR 49.107); and• Perform the following functions regarding termination inventory:<ul style="list-style-type: none">– Verify its existence.– Determine qualitative and quantitative allocability.– Make recommendations concerning serviceability.– Undertake necessary screening and redistribution.– Assist the contractor in accomplishing other disposition. |

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| 9. Negotiate a settlement based on a percentage of price plus any reasonable charges. | <p>If a no-cost settlement is not practicable, negotiate the settlement based on:</p> <ul style="list-style-type: none">• A percentage of contract price calculated using the percentage of contract work performed prior to termination; plus• Any reasonable charges that the contractor demonstrates resulted from the termination. <p>In evaluating the settlement proposal and negotiating the settlement:</p> <ul style="list-style-type: none">• Require the contractor to demonstrate the method used to calculate:<ul style="list-style-type: none">– The percentage of contract work completed; and– Any additional costs resulting from the termination using its standard record keeping system.• Never require the contractor to comply with the FAR contract cost principles or cost accounting standards.• Remember that the Government has no contractual right to audit the contractor's records. |
| 10. Determine whether to authorize contractors to settle subcontracts terminated in whole or in part without approval or ratification. | Provide such authorization under the conditions prescribed in FAR 49.108-4. |

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| 11. Approve, ratify, or disapprove subcontract termination settlements. | <p>Promptly examine each subcontract settlement received to determine if the:</p> <ul style="list-style-type: none">• Subcontract termination was made necessary by the termination of the prime contract.• Settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or, if allocable only in part, that the proposed allocation is reasonable). In evaluating the reasonableness of any subcontract settlement, generally consider:<ul style="list-style-type: none">– The requirements for the settlement of prime contract terminations;– The subcontract audit requirements at FAR 49.107; and– Agency review requirements in accordance with FAR 49.111. <p>Based on the examination results, notify the contractor in writing of:</p> <ul style="list-style-type: none">• Approval or ratification; or• The reasons for disapproval. |

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| 12. When the prime contractor is unable to reach an acceptable negotiated settlement with a sub contractor, resolve the problem. | <p>Alternatives include:</p> <ul style="list-style-type: none">• Excepting the subcontractor settlement proposal in whole or part from the remainder of the settlement and reserving the rights of the Government and the prime contractor with respect to the subcontract settlement.• When a subcontractor obtains a final judgment against a prime contractor or wins an arbitration award, treat the amount of the judgment/award as a cost of settling with the contractor, to the extent the judgment is properly allocable to the terminated portion of the prime contract, if the requirements at FAR 49.108-5 have been met.• If the prime contractor consents and it is in the Government's interest to provide assistance to the prime contractor in the settlement of a particular subcontract, the Government, the prime contractor, and a subcontractor may enter into an agreement covering the settlement of one or more subcontracts. In these settlements, the subcontractor must be paid through the prime contractor as part of the overall settlement with the prime contractor.• The termination for convenience clauses (except the short-form clauses) also provide the Government the right, at its discretion, to settle and pay any settlement proposal arising out of the termination of subcontracts. When it is in the Government's interest, the Contracting Officer can, after notifying the contractor, settle a subcontractor's proposal using the procedures for settlement of prime contracts. Direct settlements with subcontractors are not encouraged. |

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| 13. Establish the Government's prenegotiation position on the settlement and negotiate. | <p>In establishing a prenegotiation position:</p> <ul style="list-style-type: none">• For any fixed-price contract termination settlement, apply the principles at FAR 49.2 in determining the settlement amount (including any deductions under 49.204). For incentive contracts, the settlement should conform to FAR 49.115(a).• For any cost-reimbursement termination settlement, apply the procedures and principles in FAR 49.3. For cost-plus-incentive-fee contracts, the settlement should conform to FAR 49.115(b).• Consider the results of any audit of the prime contractor's settlement proposal that was needed or required under FAR 49.107 and the results of any other analysis by Government personnel.• Incorporate judgments or awards as prescribed at FAR 29.108-5.• Cover any setoffs that the Government has against the contractor that may be applied against the terminated contract.• Cover all settlement proposals of subcontractors or identify those, excepted and reserved for separate settlement.• Cover any reservation following the requirements prescribed at FAR 49.109-2.• Deduct an appropriate amount from the amount otherwise due the contractor for Government property for which the contractor cannot account.• Include any assignment of rights under subcontracts that are in the Government's interest.• Consider the use of a partial settlement using the criteria at FAR 49.109-5.• Consider any request for partial payment using the criteria at FAR 49.112-1. <p>Negotiate in good faith to obtain a reasonable settlement.</p> |

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| 14. If no negotiated agreement can be reached, issue a unilateral settlement by determination. | <p>Settle by determination when:</p> <ul style="list-style-type: none">• The Government and contractor cannot reach a bilateral agreement on all elements of out-standing cost; or• The contractor has not submitted a settlement proposal within the period stipulated in the termination clause. <p>Give the contractor at least 15 days advance notice by certified mail (return receipt requested) to submit written proof substantiating its settlement proposal.</p> <ul style="list-style-type: none">• Consider any proof provided by the contractor concerning its proposal, including vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents.• Request the contractor to submit any additional documents and data (e.g., appropriate accountings, investigations, and audits) necessary to support its proposal.• Accept copies of documents and records without requiring original documents unless there is a question of authenticity.• Hold any conferences considered appropriate:<ul style="list-style-type: none">– To confer with the contractor;– To obtain additional information from Government personnel or from independent experts; or– To consult persons who have submitted affidavits or reports. <p>Prepare the determination following the requirements at FAR 49.109-7(d).</p> <p>Retain all written evidence and other data relied upon in making a determination, except that copies of original books of account need not be made. Return books of account, together with other original papers and documents, to the contractor within a reasonable time.</p> |

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| 15. Prepare a settlement negotiation memorandum. | <p>At the conclusion of negotiations, prepare a settlement negotiation memorandum describing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities.</p> <ul style="list-style-type: none">• Document the pricing aspects of the settlement following the requirements of FAR 15.406-3.• If the settlement was negotiated on the basis of individual items, specify the factors considered for each item.• If the settlement was negotiated on an overall lump-sum basis, it is not necessary to evaluate each item or group of items individually, but the memorandum must support the total amount of the recommended settlement in reasonable detail.• Include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered.• Include any other matters that will assist reviewing authorities in understanding the basis for the settlement. <p>Distribute the memorandum in accordance with the requirements of FAR 15.406-3.</p> |
| 16. Obtain reviews and clearances of the proposed settlements. | <p>Each agency must establish procedures, when necessary, for the administrative review of proposed termination settlements. When one agency provides termination settlement services for another agency, the agency providing the services must also perform the settlement review function.</p> |
| 17. Make final payment or, where the partial payment was in excess of the final amount of the settlement, demand repayment. | <p>Accomplish final payment or repayment in compliance with FAR 49.112-1(g) and 49.112-2.</p> |

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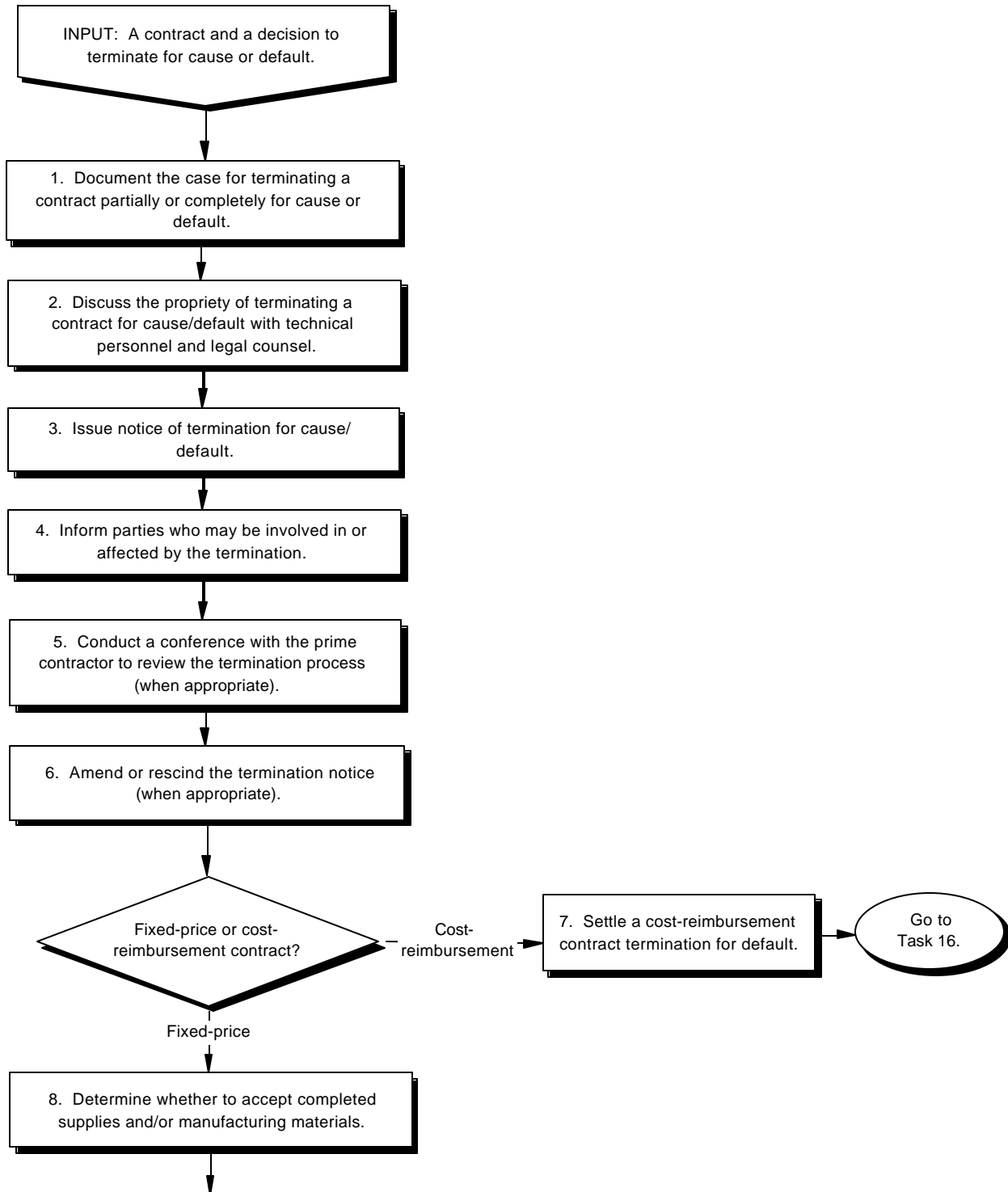
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| 18. Calculate and release excess funds. | Follow agency procedures for releasing excess funds. |
| 19. Given a contractor's request for an equitable adjustment on the remainder of a fixed-price contract partially terminated for convenience, make an equitable adjustment (when appropriate). | <p>After partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract.</p> <ul style="list-style-type: none">• The Termination Contracting Officer (TCO) must forward the proposal to the Contracting Officer except when negotiation authority is delegated to the TCO.• The contractor must submit the proposal in the format of Table 15-2 of FAR 15.408.• When the Contracting Officer retains responsibility for negotiating the equitable adjustment and executing a supplemental agreement, the Contracting Officer must ensure that no portion of an increase in price is included in a termination settlement made or in process.• The TCO must also ensure that no portion of the costs included in the equitable adjustment are included in the termination settlement. |

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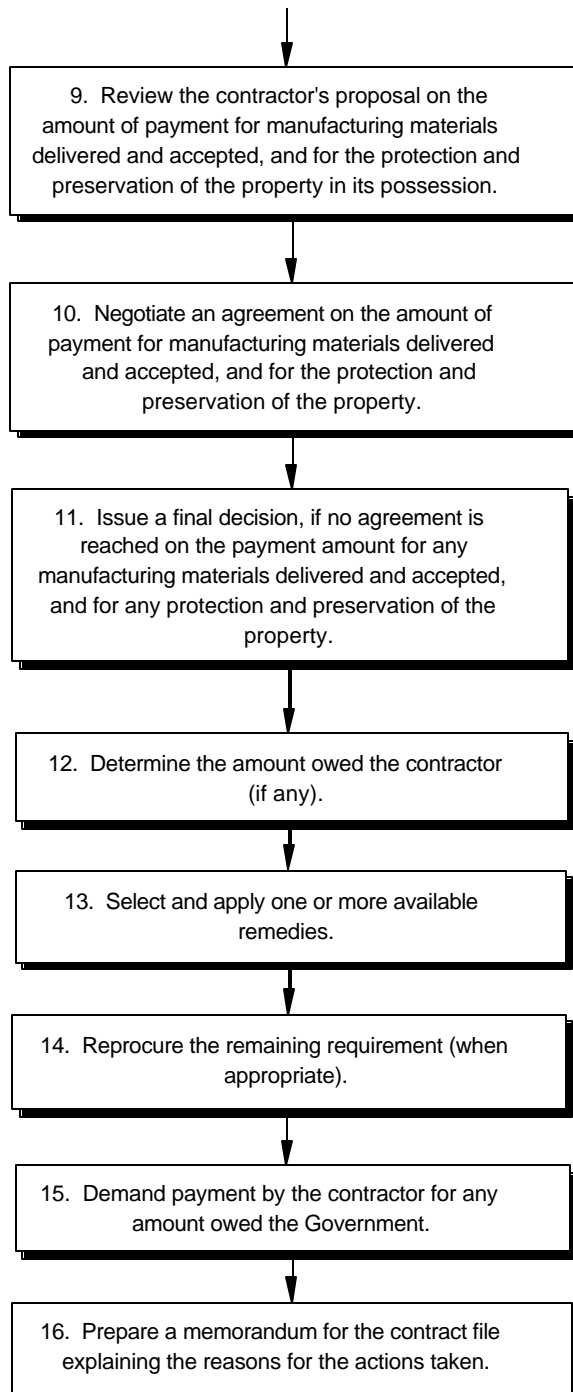
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| 1. Document the case for terminating a contract partially or completely for cause or default. | <p>The Government may terminate a commercial item contract or noncommercial item simplified acquisition, or any part thereof, for cause:</p> <ul style="list-style-type: none">• In the event of any default by the contractor; or• If the contractor fails to:<ul style="list-style-type: none">– Comply with any contract terms and conditions; or– Provide the Government, upon request, with adequate assurances of future performance. <p>The Government may terminate a noncommercial item contract, or any part thereof, for default if the contractor fails to:</p> <ul style="list-style-type: none">• Deliver the supplies or to perform the services within the time specified in the contract or any extension;• Make progress or prosecute the work, so as to endanger performance of the contract; or• Perform any of the other provisions of the contract of this clause). <p>Assure that all applicable procedural requirements for default at FAR 49.402-3(a) to (f) have been met.</p> |
| 2. Discuss the propriety of terminating a contract for cause/default with technical personnel and legal counsel. | <p>Do not terminate for cause/default unless:</p> <ul style="list-style-type: none">• Such action is in the Government's best interest; and• The facts support a termination for default. <p>If there is a question about either point above, identify additional facts necessary to support a decision.</p> |

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| 3. Issue notice of termination for cause/default. | <p>If terminating a commercial item contract or a noncommercial item simplified acquisition for cause, at a minimum the notice must:</p> <ul style="list-style-type: none">• Indicate the contract is terminated for cause;• Specify the reasons for the termination;• Indicate which remedies the Government intends to seek or provide a date by which the Government will inform the contractor of the remedy; and• State that the notice constitutes a final decision of the Contracting Officer and that the contractor has the right to appeal under the Disputes clause. <p>For other noncommercial item contracts, prepare and distribute the notice as prescribed in FAR 49.102, 49.402-3(g), 49.402-3(h) and 49.601. The notice must state:</p> <ul style="list-style-type: none">• The contract number and date;• The acts or omissions constituting the default;• That the contractor's right to proceed further under the contract (or a specified portion of the contract) is terminated;• That the supplies or services terminated may be purchased against the contractor's account, and that the contractor will be held liable for any excess costs (fixed-price only, however see FAR 52.246-3(g) with respect to failure to replace or correct defective supplies);• If the Contracting Officer has determined that the failure to perform is not excusable, that the notice of termination constitutes such decision, and that the contractor has the right to appeal such decision under the Disputes clause;• That the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and• That the notice constitutes a decision that the contractor is in default as specified and that the contractor has the right to appeal under the Disputes clause. |

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| 4. Inform parties who may be involved in or affected by the termination. | <p>When issuing the notice of termination;</p> <ul style="list-style-type: none">• Make the same distribution of the termination notice as was made of the contract.• Furnish a copy to the contractor's surety (if any) when the notice is furnished to the contractor. Request the surety to advise if it desires to arrange for completion of the work.• Notify the disbursing officer to withhold further payments under the terminated contract, pending further advice, which should be furnished at the earliest practicable time. <p>Also notify other organizations of the termination when appropriate (e.g., the program office or inspector general).</p> |

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| 5. Conduct a conference with the prime contractor to review the termination process (when appropriate). | <p>Only conduct a conference when it will facilitate the termination process. When appropriate, principal subcontractors should be requested to attend. Consider discussing the following topics when applicable:</p> <ul style="list-style-type: none">• Contractor duties under FAR 49.104;• Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;• Status of any continuing work;• Arrangements for transfer of title and delivery of any material required by the Government;• General principles and procedures to be followed in the protection, preservation, and disposition of termination inventories, including the preparation of termination inventory schedules;• Contractor accounting practices and preparation of related forms;• Form in which to submit settlement proposals;• Accounting review of settlement proposals;• Any requirement for interim financing in the nature of partial payments;• Tentative time schedule for negotiation;• Actions taken by the contractor to minimize the termination's impact upon employees; and• Obligation of the contractor to furnish accurate, complete, and current cost or pricing data, and to certify to that effect when the amount of a settlement agreement exceeds the cost or pricing data threshold. |

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| 6. Amend or rescind the termination notice (when appropriate). | <p>Amend a termination notice to:</p> <ul style="list-style-type: none">• Correct nonsubstantive mistakes in the notice;• Add supplemental data or instructions; or• Rescind the notice if it is determined that items terminated had been completed or shipped before the contractor's receipt of the notice. <p>Upon written consent of the contractor, reinstate the terminated portion of a contract, in whole or in part, by amending the notice of termination when the Contracting Officer determines in writing that:</p> <ul style="list-style-type: none">• Circumstances clearly indicate a requirement for the terminated items; and• Reinstatement is advantageous to the Government. |
| 7. Settle a cost-reimbursement contract termination for default. | <p>When terminating a cost-reimbursement contract for default, follow the procedures for settling a cost-reimbursement contract termination for convenience. Comply with FAR 49.403.</p> <p>In general, follow the steps in terminating for convenience, except:</p> <ul style="list-style-type: none">• Do not allow the costs of preparing the contractor's settlement proposal.• Reduce the total fee as provided in the Termination (Cost-Reimbursement) clause at (FAR 52.249-6(h)(4)(ii)). |

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| 8. Determine whether to accept completed supplies and/or manufacturing materials. | <p>When it is in the Government's interest to do so:</p> <ul style="list-style-type: none">• Accept completed supplies; and/or• Require the contractor to transfer the title for and deliver manufacturing materials that the contractor specifically produced or acquired for the terminated portion of this contract. Manufacturing materials include partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights. <p>The Government must pay the contract price for completed supplies delivered and accepted. The price for manufacturing materials is negotiable.</p> |
| 9. Review the contractor's proposal on the amount of payment for manufacturing materials delivered and accepted, and for the protection and preservation of the property in its possession. | Request assistance from other members of the Government acquisition team as necessary. |
| 10. Negotiate an agreement on the amount of payment for manufacturing materials delivered and accepted, and for the protection and preservation of the property. | <p>The Government position for negotiation should be based on the contractor's proposal, Government analysis of the proposal, and any other available information.</p> <p>Negotiate in good faith to obtain a reasonable agreement.</p> |
| 11. Issue a final decision, if no agreement is reached on the payment amount for any manufacturing materials delivered and accepted, and for any protection and preservation of the property. | Failure to agree will be a dispute under the Disputes clause. |

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| 12. Determine the amount owed the contractor (if any). | <p>In calculating the total amount owed the contractor in a fixed-price termination for default, consider the following:</p> <ul style="list-style-type: none">• The contract price for completed supplies that have been delivered and accepted.• The price negotiated or set by the Contracting Officer's final decision for manufacturing materials that have been delivered and accepted by the Government, and for any protection and preservation of the property.• Any deductions necessary to protect the Government against loss because of outstanding liens or claims of former lien holders. |

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| 13. Select and apply one or more available remedies. | <p>The Default (Fixed-Price Supply and Service) clause (FAR 52.249-8):</p> <ul style="list-style-type: none">• Gives the Government the right to acquire the contract items under the terms and in the manner that the Contracting Officer considers appropriate;• Makes the contractor responsible for any excess costs of reprocurement; and• Reserves any other Government rights under law or the contract. <p>The default guidelines for commercial item contracts and noncommercial item simplified acquisitions state that the Government is not liable to the contractor for any amount and the contractor is liable to the Government for any and all rights and remedies provided by law. The UCC provides a variety of remedies. For example, the buyer may:</p> <ul style="list-style-type: none">• “Cover” by making in good faith and without delay any reasonable purchase or contract to purchase goods in substitution of those due from the seller (UCC 2-712);• Recover as damages for any nonconformity or tender the loss resulting in the ordinary course of events from the seller’s breach as determined by any manner which is reasonable (UCC 2-714); or• Recover incidental or consequential damages related to the seller’s failure to perform (UCC 2-715). |

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| 14. Reprocure the remaining requirement (when appropriate). | <p>For noncommercial item contracts, comply with the requirements of FAR 49.402-6 when reprocuring.</p> <p>When terminating a commercial item contract or a noncommercial item simplified acquisition for cause:</p> <ul style="list-style-type: none">• Consider the requirements of both FAR 49.402-6 and the UCC;• Mitigate or reduce damages to the Government (e.g., by promptly reprocuring at a fair and reasonable price); and• Compute excess reprocurement costs and incidental or consequential damages incurred because of the termination. |
| 15. Demand payment by the contractor for any amount owed the Government. | <p>Calculate the amount due the Government considering the following:</p> <ul style="list-style-type: none">• Add:<ul style="list-style-type: none">– The reprocurement costs described in FAR 49.402-6; and– Any other damages (including administrative costs) per FAR 49.402-7 after considering any legal advice on the propriety of adding such costs.• Subtract any amount owed the contractor, such as:<ul style="list-style-type: none">– The contract price for completed supplies that have been delivered and accepted;– The negotiated price or price set by Contracting Officer's final decision for manufacturing materials that have been delivered and accepted by the Government and for any protection and preservation of the property; and– The amount necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.• The difference is the amount due the Government. |

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| 16. Prepare a memorandum for the contract file explaining the reasons for the actions taken. | <p>Document the case for terminating a contract partially or completely for cause or default. To clarify the actions taken, consider attaching or specifically referencing:</p> <ul style="list-style-type: none">• A copy of the termination notice;• Any agreements negotiated with the contractor;• The reprourement file; and• Calculation of the amount due the Government as a result of the termination. |